

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 04-30

February 20, 2004

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Casehandling Cost Savings Instructions

On January 23, 2004, President Bush signed the Omnibus Budget Authorization Act of 2004, which included a budget authorization for the National Labor Relations Board, after rescission, of \$242,633,000, an increase of \$5,204,000 over FY 2003. In their memorandum to all employees of January 15, 2004, Chairman Robert J. Battista and General Counsel Arthur F. Rosenfeld reported that with salary and rent increases mandated for 2004, providing level services in 2004 would mean a shortfall of approximately \$8.7 million. Also in that memorandum, the Chairman and General Counsel reported some of the cost saving measures already undertaken and those planned to bring Agency expenditure down to the budget level. They also reported that discussions would shortly commence with the collective-bargaining representatives of Agency employees about the discontinuance or reduction of certain contract benefits. That process has begun.

In order for the NLRB to perform its statutory mission in FY 2004 under its budget authorization, an Operating Plan has been developed to guide Agency spending through the remainder of the fiscal year. This Plan reduces expenditures in a number of program areas. The spending reductions will require a significant adjustment in certain programs and activities. The primary principle guiding the drafting of the Operating Plan is to continue, to the greatest degree possible, the processing of unfair labor practice and representation cases from filing to final disposition in the high quality and efficient manner for which the NLRB is known. In addition, the plan has been developed to ensure, to the fullest extent possible, that the employees of the Agency, its greatest asset, will not suffer a loss of pay due to furlough.

To ensure against the compromise of casehandling capacity due to budget shortages, it is necessary that cost saving measures be instituted as soon as possible. Listed here are measures that we believe can be implemented without unduly affecting the quality of casehandling. Therefore, please incorporate the following measures and considerations in your casehandling routines.

## **UNFAIR LABOR PRACTICE SETTLEMENTS AND ELECTION AGREEMENTS**

The Field continues to enjoy remarkable success in securing settlements of merit unfair labor practice cases and election agreements to resolve pre-election disputes. The national rates in these categories of performance for Fiscal Year 2003 were 92.8% and 88.5%, respectively. Notwithstanding these laudable national performance results, in certain individual Regions, performance in one or both of these areas is well below the national figure. The salutary effects of ULP settlements in resolving labor disputes and election agreements in facilitating the resolution of questions concerning representation are obvious and must be pursued. In addition, and of special importance at this time of budget crisis, significant savings of Agency staff and budget resources result from high settlement and election agreement rates. It is also true that settlement early in the processing of a merit unfair labor practice case and the negotiation of an election agreement early in the processing of a merit representation case will result in the greatest saving in resources. Accordingly, in all Regional Offices, and especially in those offices where performance in these areas is below the national experience, redoubled efforts should be made to improve performance. In this regard, training for all professional employees should be conducted on settlement techniques, settlement coordinators should be active and Regional Directors should be directly involved in settlement efforts. Please consult Memoranda OM 89-91, dated September 29, 1989; OM 97-81, dated December 9, 1997, and OM 98-33, May 12, 1998.

## **TRIALS AND REPRESENTATION CASE HEARINGS, COMMUNICATION WITH DIVISION OF JUDGES**

For those trials which will be going forward despite exhaustive settlement efforts, in order to save on transportation and per diem costs for witnesses, pre-trial preparation should be conducted in the Regional Office, by phone, videoconference, if feasible, or in conjunction with other required travel, if at all possible to keep costs to a minimum. **It is reserved to the sound discretion of the Regional Director to determine whether Board attorney travel should be invested in preliminary pre-trial preparation.**

Certainly, the trial attorney should meet in person with witnesses to complete pre-trial preparation in coordination with travel to the hearing. Witnesses whose presence at trial must be secured by subpoena at government expense should be required to appear only when their presence is required and should be released as soon thereafter as possible. Other stratagems which may contribute to shorter, more efficiently run trials and representation hearings during the budgetary crises should also be employed:

1. Continue to discourage unduly lengthy records in both unfair labor practice and representation case hearings.
2. In making assignments for trials and hearings that are scheduled for outside of the office city, avoid the assignment of inexperienced counsel to "second chair" senior counsel as a training exercise. Two attorneys should be assigned to out-of-town cases only in large cases requiring those resources.

3. Avoid additional costs to court reporters and interpreters by providing timely notice of the postponement or cancellation of hearings/trials and avoid overtime costs for court reporters unless overtime will allow the Region to conclude the proceeding.
4. Ensure that when facilities must be rented for hearings, trials or elections the least expensive alternatives that will at the same time suit the Agency's needs are chosen.
5. In appropriate cases, have trial attorneys use oral argument at the end of the hearing in lieu of filing post-trial briefs and encourage administrative law judges to issue bench decisions.

In addition, close communication with the Division of Judges with regard to the amendment of complaints and settlement efforts will ensure the Judges schedule the appropriate number of hearing days and avoid unnecessary trips.

## **INVESTIGATIONS**

Alternative Investigatory Techniques - Full use should be made of alternative investigatory techniques. Accordingly, questionnaires, telephone affidavits, videoconference interviews, where feasible, position statements and other techniques that reduce or eliminate the costs usually associated with unfair labor practice investigations should be employed as appropriate. See Memoranda OM 95-15, dated August 22, 1995, and GC 02-02, dated December 6, 2001.<sup>1</sup> Thus, all Category I and

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<sup>1</sup> GC 02-02 states, at. p. 3,

Face-to-face affidavits remain the cornerstone of our investigations. Experience has shown, however, that there are also alternative investigative techniques that can save time and resources without adversely affecting quality in certain types of cases. Especially where significant travel would otherwise be involved, such techniques save both considerable time and resources, thereby allowing Board agents to address other matters. While the need to utilize these techniques, such as questionnaires and telephone affidavits, was originally based upon a shortage of casehandling resources, even with adequate resources the use of these techniques in the investigation of certain types of cases should be continued in order to promote both efficiency and economy. In particular, all Regional Offices should utilize alternative techniques for all Category I cases and continue to use them for certain Category II cases, such as a Section 8(a)(5) or 8(b)(3) request for information or a Section 8(b)(1)(A) duty of fair representation allegation, which, as previously noted, will now be placed in Category II. Additionally, consistent with Memorandum OM 99-75, Regional Directors continue to have the discretion to use these techniques for other Category III and II cases, where appropriate. As stated in that memorandum:

In situations where substantial travel will be necessary, the Regional Directors may exercise their discretion to take telephonic affidavits in circumstances where the affidavit is a supplemental statement, where individuals are providing evidence that corroborates evidence presented in a face-to-face affidavit or where there is a very high probability that the case has no merit.

(Footnotes omitted).

most Category II cases should be investigated without Board agent travel, unless the Regional Director determines that travel is essential to a quality investigation.

## **TRAVEL**

Travel Coordinator - The Travel Coordinator in each Region should continue to manage Regional travel on a daily basis, clustering travel assignments for Board agents and avoiding nonessential travel while ensuring that appropriate, alternative investigative techniques are employed in lieu of travel whenever possible. Interregional coordination of travel for investigations is encouraged. Travel coordinators in contiguous regions should be in frequent contact to permit agents traveling in the outskirts of their regions to assist in investigations or elections in the outskirts of a contiguous region. Use of GSA cars when available and when cost effective should be encouraged. See Memorandum OM 03-89, dated August 1, 2003. When travel by air is absolutely necessary, the most cost efficient arrangements should be employed.

Travel Management Centers - All travel arrangements should be made through the Carlson Travel Management Center. When using these centers, travel may be charged against the Regional Agency account or an employee's government Citibank card. Either way, the Agency receives a rebate on the expenditure. Whenever possible, employees are also required to use their government Citibank card to charge lodging and subsistence expenses for which the Agency will also receive a rebate.

Travel Responsibilities of the Parties – Except when Board agent travel can be coordinated, or under special circumstances, all institutional charging parties and their witnesses within 120 miles of the field office location should be encouraged to travel to the office to present evidence and give affidavit testimony. It is reserved to the sound discretion of the Regional Director to determine whether Board agent travel should be invested in the investigation where the institutional charging party or its witnesses are unwilling to travel up to 120 miles to the Regional Office. In exercising this discretion, the Director should be sensitive to the hardship such a requirement might impose on certain parties. Charged parties and their witnesses located within 120 miles should be strongly encouraged to travel to the office. Unfair labor practice and representation case hearings should be conducted in the field office or field office city in cases involving employers located within 120 miles from the field office city. Regional Office managers must exercise judgment where the presence of witnesses at hearings must be compelled by subpoena and costs associated with subpoenas make the conduct of the hearing in a location remote from the Region cost effective.

## **MAIL, WRITTEN COMMUNICATIONS**

Decrease Reliance on Private Delivery Services and Certified Mail - Regions should significantly decrease the use of Federal Express (unless economically justified) and certified mail, especially for interoffice mail. Eliminate the use of these services if "next day delivery" would mean Saturday delivery.

Electronic Mail - Increase use of e-mail in place of correspondence to and from Headquarters and between field offices and with the parties, consistent with Memorandum OM 03-74, dated May 6, 2003.

### **SUPPLIES, EQUIPMENT, PAPER**

Paper Reduction Program - Reduce significantly the amount of paper products used by the Regional Offices:

1. Maximize the use of e-mail for intraoffice announcements of general interest and for posting of vacancy notices. Discourage the practice of printing out e-mail messages, except where appropriate for casehandling purposes consistent with OM 03-74.
2. Copies of official documents such as complaints should be reduced to the minimum number necessary.
4. Copies of documents transmitted to Headquarters offices should be reduced to the minimum necessary. If a document has been faxed to Headquarters, determine whether it is necessary that a hard copy be forwarded.
5. Office supplies and services should be purchased with Purchase Card. Use of the card ensures that the price at purchase is the price billed to the Agency and a rebate is paid to the Agency based upon the amount charged.
6. Take advantage of discounts offered by vendors and creditors for processing and paying invoices prior to their due date. Consult Block 16 on the purchase orders to determine if such a credit is applicable.

### **PHONES AND PHOTOCOPY EQUIPMENT USE**

Phone Lines - Disconnect unused leased phone lines. Phone line costs vary from location to location but average approximately \$35.00 per month. Generally, there is no cost to disconnect a phone line, but reactivation costs can be substantial. Thus, the Regions should balance these costs with anticipated savings. If a line is to be unused for at least 4 to 6 months, a net savings to the Agency would result if the line is disconnected, even if a reconnection charge is later incurred. Contact Rob White, NLRB Telecommunications, for information specific to your city.

Photocopy Machine Use - Use of office photocopy machines should be prudently monitored and abuse prevented. Double-sided photocopying should be used whenever possible.

## **GSA CAR USE**

Consistent with Memorandum OM 03-98, dated August 1, 2003, Regions should lease from GSA only those vehicles that are justified by GSA or approved alternative standards. Other vehicles should be surrendered to GSA.

As always, I fully expect that Field employees will work together with those in Washington in aid of our efforts to conserve scarce budget resources while continuing to enforce the National Labor Relations Act and provide service to the public. Please conduct a staff meeting to share this memorandum with your staff. Thank you for your anticipated cooperation.

/s/  
R.A.S.

cc: NLRBU  
Release to Public

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